INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Specification of errors to be urged	5
Summary of argument	5
Argument	8
Conclusion	20
Appendix	21

CITATIONS

Cases:	
Belk v. *Meagher*, 104 U.S. 279	13
Black v. *Elkhorn Mining Co.*, 163 U.S. 445	10, 15
Cameron v. *United States*, 252 U.S. 450	16
Chambers v. *Harrington*, 111 U.S. 350	11
Cole v. *Ralph*, 252 U.S. 286	10
El Paso Brick Co. v. *McKnight*, 233 U.S. 250	10
Federal Shale Oil Co., 53 L.D. 213, 216–217	17
Guillim v. *Donnellan*, 115 U.S. 45	10
Lavagnino v. *Uhlig*, 198 U.S. 443	13
Peachy v. *Frisco Gold Mines Co.*, 204 Fed. 659	15
Swanson v. *Kettler*, 17 Idaho 321, affirmed, *sub. nom. Swanson* v. *Sears*, 224 U.S. 180	13, 14
Union Oil Co. v. *Smith*, 249 U.S. 337	10
United States v. *Wilbur*, 283 U.S. 414	13
West v. *Work*, 11 F. (2d) 828, certiorari denied, 271 U.S. 689	13
Wilbur v. *Krushnic*, 280 U.S. 306	5, 8, 17, 18, 20
Statutes:	
Revised Statutes, Sec. 2319 (U.S.C., Title 30, Sec. 22)	11
Revised Statutes, Sec. 2324 (Mining Act of May 10, 1872, c. 152, Sec. 5, 17 Stat. 91, 92 (U.S.C., Title 30, Sec. 28))	22
Mineral Leasing Act of February 25, 1920, c. 85, 41 Stat. 437 (U.S.C., Title 30, Secs. 181, 193): Sec. 27	21
Miscellaneous:	
Lindley, *Mines* (3d ed.), Secs. 642–644	15

85324—34——1

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 23

HAROLD L. ICKES, AS SECRETARY OF THE INTERIOR, petitioner,

v.

VIRGINIA-COLORADO DEVELOPMENT CORPORATION

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The Supreme Court of the District of Columbia wrote no opinion (R. 7). The opinion of the Court of Appeals (R. 10–13) is reported in 69 F. (2d) 123.

JURISDICTION

The judgment of the Court of Appeals was entered January 22, 1934 (R. 13). Petition for writ of certiorari was filed April 19, 1934, and the writ was granted May 21, 1934 (R. 14). The jurisdiction of this Court rests on Section 240 (a) of the Ju-

dicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does Section 37 of the Leasing Act of February 25, 1920, give to the Secretary of the Interior power, upon hearing, to cancel claims to oil shale lands initiated under the general mining law, where the locator has neglected to perform assessment labor of the value of $100 or more during any assessment year, provided action to cancel such claim shall have been taken by the Secretary of the Interior before the owner of the claim resumes assessment work?

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 21–22.

STATEMENT

This is a suit in equity brought in the Supreme Court of the District of Columbia by the respondent, Virginia-Colorado Development Corporation, against the Secretary of the Interior, in which a mandatory injunction was sought requiring the Secretary of the Interior to vacate and set aside his decision declaring to be null and void certain oil shale placer claims owned by the respondent. The essential facts alleged in the bill of complaint (R. 1–6) are as follows:

In June 1917, under the Mining Act of 1872, the respondent located certain oil shale placer claims in Colorado known as the Mt. Mamm, Nos. 12 to 17

(R. 1). That Act (Section 2324 of the Revised Statutes, *infra*, p. 22) required that until a patent was issued for the claims "not less than one hundred dollars' worth of labor shall be performed or improvements made during each year * * * and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives have not resumed work upon the claim after failure and before such location."

The respondent, from the time of the location of the claims up to and including the year ending July 1, 1930, performed the assessment work of not less than $100 annually as required by the statute, but failed to perform such labor during the year ending July 1, 1931. This default continued throughout the months of July, August, and part of September 1931 (R. 2).

On September 4, 1931, proceedings were initiated by the Department of the Interior, through the General Land Office, against the respondent's claims, by the filing in the Land Office and posting on the claims of a challenge to the respondent's right and title thereto. This challenge was based upon the ground that the respondent had failed to perform the assessment labor for the year ending July 1, 1931, and had not resumed such labor before the challenge was filed and posted. The

challenge stated that the United States resumed possession of the land within the claims. It was based upon the ground that the respondent's failure to perform assessment work for the year ending July 1, 1931, and before the filing of the challenge on September 4, 1931, entitled the Secretary to declare a forfeiture of the respondent's right and title to the claims and made them subject to cancellation by the Government (R. 2). No relocation of the claims had been made or attempted by any other person or company during this period, nor had anyone made application to lease the lands from the Government (R. 2).

The respondent contested the proceedings in the General Land Office, but the Commissioner held that the claims were null and void, and upon appeal this decision was affirmed by the Secretary of the Interior (R. 3). On July 15, 1932, the Department's decision was promulgated declaring the respondent's claims to be null and void, and asserting that the United States had taken possession of the lands within the claims for its own uses and purposes (R. 3).

The respondent contended that these proceedings were unauthorized, and that its claims were good against the United States, notwithstanding its failure to perform assessment work (R. 3–5). The prayer was for a mandatory injunction to set aside the proceedings and decision (R. 6).

The petitioner moved to dismiss the bill (R. 7). The motion was denied, petitioner declined to plead

further, and a decree was entered as prayed in the bill (R. 7–8). This decree was affirmed by the Court of Appeals (R. 13).

SPECIFICATION OF ERRORS TO BE URGED

1. The Court of Appeals erred in holding that under Section 37 of the Mineral Leasing Act of 1920 the Secretary of the Interior was without authority to declare a forfeiture of the claims in question.

2. The Court of Appeals erred in holding that the actions of the Secretary of the Interior in his challenge of the respondent's claims and his resumption thereof for the United States were without authority of law and were null and void.

3. The Court of Appeals erred in affirming the decree of the Supreme Court of the District of Columbia.

SUMMARY OF ARGUMENT

The question presented in the instant case is the precise question which was reserved by this Court in *Wilbur* v. *Krushnic*, 280 U.S. 306, 317, 318, when it held that an oil-shale placer claim, existent at the date of the passage of the Leasing Act of 1920, is "maintained" within the meaning of Section 37 of that Act (*infra*, p. 21) if, after default in the performance of annual assessment work, labor is resumed, "unless at least some form of challenge on behalf of the United States to the valid existence of the claim has intervened." In the instant case such a challenge was asserted prior to the resump-

tion of work by the respondent, and we contend that in these circumstances the principles upon which the decision in the *Krushnic* case was based have no application here.

Section 37 of the Leasing Act (*infra*, p. 21) excepts from the operation of that Act "valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated." The only requirement for the maintenance of a claim under the old mining law, once the claim had been perfected, was the requirement in Section 2324 of the Revised Statutes (*infra*, p. 22) as to the performance of annual assessment work. That requirement constituted a condition subsequent to the right of exclusive possession granted by the United States to the locator. Failure to comply with the condition opened the claim to relocation by another. It did not, however, result in forfeiture of the claim as against the Government, for the Government had no direct interest in the matter, being concerned only with seeing that its mineral-bearing lands were kept open for private exploitation.

The Leasing Act of 1920 effected a complete change of policy in respect of lands containing oil and oil shale. The practice of location was abolished, and a system of leasing, subject to payment of royalties, substituted in its place. Consequently, relocation became impossible, the Government's offer to locators having been withdrawn. Thus the locator who fails to perform assessment work no

longer runs the risk of having his claim appropriated by a rival claimant, and if the court below was correct in holding that the Government may not take advantage of the default, the right which was subject to a condition when initiated is now unconditional. We do not think this can have been the intention of Congress, for the result is out of harmony with the evident policy of both the old mining law and the 1920 Act. It would hinder the disposition of lands under the Act and deprive the Government of royalties, although the lands were not being diligently exploited by the claimant.

The Leasing Act of 1920 places no additional burden on the locator. Under the provisions of the Act of 1872 (Sec. 2324 R.S., *infra*, p. 22) he is required, during each assessment year, to perform labor on his claim of the value of $100.00 or more. Under the Leasing Act of 1920 the same exactions are required of him. However, if he fails to perform such labor, then, by the terms of the Leasing Act the United States is given the right to challenge the validity of the claim by reason of such default. The possibility of relocation is taken away and the possibility of intervention is substituted in its place. The risk is substantially the same.

If we are correct in construing the Leasing Act as giving the Government the right to resume possession of oil lands when the locator fails to perform assessment work, then we think there can be no doubt that the Secretary of the Interior, being

the official in charge of public lands, has authority to institute proceedings to that end, although the Leasing Act does not expressly so provide.

We submit that the contentions advanced by the respondent in the court below, including the contention that the Leasing Act as construed by the Government takes private property for public use in contravention of the Constitution, are unsound. We submit further that the decision below is erroneous and should be reversed.

ARGUMENT

In *Wilbur* v. *Krushnic*, 280 U.S. 306, there was involved the question whether an oil shale placer claim, valid at the date of the enactment of the Leasing Act of 1920, was automatically extinguished by subsequent failure to perform annual assessment work as required by Section 2324 of the Revised Statutes (*infra*, p. 22) and could be declared forfeit by the Government on account of such failure, when work had been resumed on the claim before the Government took steps to declare a forfeiture. This Court held that the claim was not extinguished, and said (pp. 317–318):

> It is not doubted that a claim instituted under § 2324, R.S., could be maintained by the performance of annual assessment work of the value of $100; and we think it is no less clear that after failure to do assessment work, the owner equally maintains his claim, within the meaning of the Leasing Act, by a resumption of work, *unless at least some*

> *form of challenge on behalf of the United States to the valid existence of the claim has intervened;* * * * (Italics ours.)

The question presented in the instant case is the precise question that was reserved in the *Krushnic* case by the language quoted in italics above. The respondent's claim was admittedly a valid claim in existence at the date of the passage of the Leasing Act. During the year ending July 1, 1931, however, no assessment work was performed, and in September 1931, while the respondent was still in default, the United States instituted proceedings to resume possession of the land. The challenge, as in the *Krushnic* case, was predicated on Section 37 of the Leasing Act (*infra*, p. 21), which provides that the disposition of public lands containing deposits of coal, phosphate, oil, oil shale, and gas shall be governed exclusively by the provisions of that Act, with the following exception:

> except as to valid claims existent at date of the passage of this Act *and thereafter maintained in compliance with the laws under which initiated,* which claims may be perfected under such laws, including discovery. (Italics ours.)

The court below held that because the Government could not have challenged the maintenance of a claim prior to the passage of the Leasing Act it is precluded from doing so now by Section 37, *infra*, which preserves existing rights under the prior law. It is our contention that the principles

upon which the rule referred to by the court was based are not applicable here, and that the policy expressed in the Leasing Act affirmatively requires that the Government be permitted to resume possession of a claim which is not duly maintained.

We think it cannot be seriously doubted that in excepting from the terms of the Leasing Act existing claims "maintained in compliance with the laws under which initiated", Congress had in mind primarily compliance with the requirement as to annual assessment labor. That requirement, found in Section 2324 of the Revised Statutes (*infra*, p. 22), was the only one imposed upon locators as a condition to the preservation of the right secured by a perfected location. Moreover, the frequency with which "maintained", or equivalent expressions, such as "kept up", "kept alive", "preserved", are encountered in the opinions of this Court in connection with annual assessment work (see *Gwillim* v. *Donnellan*, 115 U.S. 45, 48; *El Paso Brick Co.* v. *McKnight*, 233 U.S. 250, 256; *Union Oil Co.* v. *Smith*, 249 U.S. 337, 349; *Cole* v. *Ralph*, 252 U.S. 286, 295) shows that those words had a well-understood meaning. This Court appears to have so construed the Act when it decided the *Krushnic* case, and the court below did not hold otherwise.

The obligation to perform annual assessment labor was a condition subsequent to the right of exclusive possession granted by the United States. *Union Oil Co.* v. *Smith, supra; Black* v. *Elkhorn*

Mining Co., 163 U.S. 445, 450. Failure to comply with the condition rendered the right of possession defeasible, for the statute provided that in case of default in the performance of annual assessment work the claim should be open to relocation just as if no location had ever been made. The right might, however, be preserved by resumption of labor prior to relocation by another.

Section 2324, *infra*, made no provision for reversion to the Government of the right of possession in the event of default, and it was well settled that default did not result in forfeiture of the claim as against the United States. *Wilbur* v. *Krushnic*, *supra*, p. 317. The reason for this may readily be apprehended. Prior to 1920 the United States asserted no direct interest in the mineral deposits lying within the public domain. It did not itself make any effort to extract them for public use, nor did it attempt to secure revenue by leasing the lands to others. The policy was to permit free exploration and occupation without payment of rent or royalties. See Section 2319 of the Revised Statutes (U.S.C., Title 30, Sec. 22); *Union Oil Co.* v. *Smith*, *supra*, p. 346; *Cole* v. *Ralph*, *supra*, p. 294. And the only purpose of Section 2324 was to keep mineral-bearing lands open to private exploitation by persons willing and able to develop them; or, as this Court said in *Chambers* v. *Harrington*, 111 U.S. 350, 353:

> to require every person who asserted an exclusive right to his discovery or claim to

expend something of labor or value on it as evidence of his good faith, and to show that he was not acting on the principle of the dog in the manger.

It may be assumed that the Government's interest in preventing its mineral lands from being monopolized by those who were either unwilling or unable to develop them was sufficiently protected by exposing locators to the risk of having their claims appropriated by rival claimants. In any event, it is obvious that no good purpose was to be served by permitting repossession by the Government itself, when the Government had no intention of doing anything but reassign the land to some other private individual for his own use and benefit.

These considerations, we submit, formed the basis for the rule upon which the court below relied, and which it held to be decisive of the instant case, namely, that faithful performance of annual assessment work is not necessary to preserve or maintain the right to possession of a mining claim as against the Government.

The Leasing Act of 1920, however, effected a complete change of policy in respect of lands containing coal, phosphate, oil, oil shale, or gas. The Government no longer grants its coal and oil lands freely to discoverers and locators, conditioned only on development, but deals with them as resources to be conserved. Such lands, under the present system, are open only to lease, subject to payment

of royalty to the United States, and may, if the public interest requires, be withheld from private exploitation altogether. *United States* v. *Wilbur*, 283 U.S. 414; *West* v. *Work*, 11 F. (2d) 828, 831 (App.D.C.), certiorari denied, 271 U.S. 689.

The effect of the Leasing Act was to abolish "location" of oil claims, and likewise "relocation." A relocation, as much as an original location, is a direct grant from the Government. There is no privity of title between the relocator and his predecessor in possession (*Lavagnino* v. *Uhlig*, 198 U.S. 443, 452), for the claim of the latter, rendered defeasible by the failure to perform assessment work, is extinguished by the act of relocation, and the relocator acquires his rights from the United States, the owner of the fee. *Swanson* v. *Kettler*, 17 Idaho 321, 336, affirmed, *sub nom. Swanson* v. *Sears*, 224 U.S. 180. This Court said in *Belk* v. *Meagher*, 104 U.S. 279, 285:

> As the proceeding to locate is one in which the United States is not directly an actor, but is carried on by the locator alone, so that he may take what the United States has, through an act of Congress, offered to give, it is clear that there can be nothing to take until there is an offer to give.

In that case, at the date of the attempted relocation, the United States had nothing to give because the land was embraced in a subsisting location which was still indefeasible, the period during which assessment work might be timely performed

not having expired. In the present case, when the respondent defaulted in the performance of annual labor, the United States had withdrawn its offer to give under the general mining law, so that the claims of the respondent were no longer exposed to forfeiture by relocation. Cf. *Swanson v. Sears, supra,* p. 182. It follows that if the decision below is correct these claims, although subject to a condition subsequent when initiated, have become wholly indefeasible by virtue of the Leasing Act, and the respondent may now disregard the obligation to develop and improve the claims without fear of loss or impairment of his estate.

We submit that this cannot have been the intention of Congress. The Leasing Act very properly provided for the protection of existing claims, but only so long as they were "maintained in compliance with the laws under which initiated." If not maintained as required by the Act, they must be subject to defeasance as before. But failure to fulfill the condition subsequent cannot have the effect provided by Section 2324 of the Revised Statutes, for, as has been pointed out, relocation is no longer possible. Defeasance must, therefore, be at the challenge of the Government, which not only holds the ultimate title, but has now announced a policy giving it a definite and direct interest in the observance of the condition.

If the Government cannot take advantage of the default, then no one can. The result is out of harmony with the policy of both Section 2324 of the

Revised Statutes and the general Leasing Act, for the condition subsequent in Section 2324, designed to keep valuable mineral claims in active development, not only no longer exists in its original form but, under the decision below, is wholly abrogated; while the evident intent of Congress to preserve claims only so long as they are "maintained" under the old law is defeated by reason of the inability of anyone to assert the failure to maintain.

The practical effect of the decision below is to render the estate of the locator terminable only at his will and pleasure, no matter how negligent he has been in developing the land. He may hold the claim against any applicant under the Leasing Act and against the Government itself, provided only he does not actually abandon it. The result is that the status of lands containing oil shale or any of the other minerals named in the Act may be extremely difficult of ascertainment if the title is clouded by notices of location made prior to 1920. The Government will be put to the necessity of establishing by evidence *aliunde* that the claims have been abandoned, for abandonment depends largely on intention, and mere absence or failure to work the claim for any definite time is not sufficient to prove that it has been abandoned. *Black* v. *Elkhorn Mining Co.*, 163 U.S. 445, 450; *Peachy* v. *Frisco Gold Mines Co.*, 204 Fed. 659 (D. Arizona). See also Lindley, *Mines* (3d ed.), Secs. 642–644. We do not think Congress can have intended that

the disposition under the Leasing Act of mining claims not in active development should be thus impeded.

It is true that the Leasing Act does not expressly authorize the Secretary of the Interior to take steps to resume possession of claims that are not "maintained" within the meaning of the Act, but we submit that if the right of repossession exists in the Government, the broad authority vested in the Secretary of the Interior is sufficient to empower him to enforce that right. As this Court said in *Cameron* v. *United States*, 252 U.S. 450, 459, 460, 461:

> By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department, as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved. * * *
>
> * * * * *
>
> Of course, the land department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government it does have power, after proper notice and upon adequate hearing, to determine whether the claim is valid and, if it be found invalid, to declare it null and void. * * *

> True, the mineral land law does not in itself confer such authority on the land department. Neither does it place the authority elsewhere. But this does not mean that the authority does not exist anywhere, for, in the absence of some direction to the contrary, the general statutory provisions before mentioned vest it in the land department. * * *

The Court was there speaking of the Secretary's right to determine the validity of a claim in its inception, but we think the same principles are applicable here, assuming the existence of the Government's right to repossess. See also *Federal Shale Oil Co.*, 53 L.D. 213, 216–217.

The respondent, in the court below, urged that the Government's position was inconsistent with this Court's decision in the *Krushnic* case because it rested on the proposition that failure to perform assessment work renders a claim invalid, whereas this Court said that resumption of work "does not *restore* a *lost* estate" but "*preserves* an *existing* estate" (280 U.S. 306, 318). We submit that there is no inconsistency whatsoever. We do not contend that the respondent's claim was invalid, in the sense that it had ceased to have any existence in law. Our contention is—and we think it is amply supported by the authorities which have been cited—that the claim had become defeasible by reason of the failure to comply with Section 2324. The fact

that default in the performance of assessment work does not *ipso facto* forfeit a claim or render it void does not mean that the estate of the locator continues in all its original vigor. A valid claim, so long as it is maintained in accordance with Section 2324, is impregnable, but when the requirements of that section are no longer observed the right of possession ceases to be *exclusive,* and upon relocation by another is lost altogether. This must be so, for, if it were otherwise, relocation during the period of default would be a trespass. Consequently, it is not correct to say, as the respondent did in its brief below, that a claim must be either wholly valid or wholly invalid, and that since this Court has held that a claim in default is not wholly invalid, such a claim must be wholly valid. The distinction between "void" and "voidable" is a familiar one. A claim that is "voidable" is not of the same dignity as one that is valid in every respect, and yet it is not a void or invalid claim. So here, failure to do assessment work renders a claim "voidable" at the instance of an adverse claimant. Resumption of work prior to relocation does not "restore" a "lost" estate, but it "preserves" the estate by rendering it once more indefeasible.

The respondent also suggested in the court below that in holding in the *Krushnic* case (280 U.S. 306, 317-318) that a claim is "maintained" after failure to do assessment work if work is resumed prior to relocation, unless "some form of challenge

on behalf of the United States to the valid existence of the claim has intervened", this Court had reference only to a possible challenge to the validity of the claim apart from the question of assessment labor. But if default in the performance of assessment work be excluded, the only possible grounds of challenge, aside from deliberate abandonment, would be those going to the validity of the claim or location *ab initio*. It seems clear, however, that the Court was speaking of claims assumed to be valid as of the date of the Leasing Act, for we submit that if a claim was void or voidable in its inception no amount of assessment work would prevent the Government from challenging its validity, and the question whether a challenge had "intervened" prior to resumption of work or had not been asserted until later would be immaterial. See opinion of the Interior Department adjudicating the respondent's claims, 53 L.D. 666. This interpretation of the Court's opinion is supported by the fact that the subject under consideration was whether the claimant had complied with the requirement of Section 37 that the claim be "maintained", not whether the claim was valid at the date of the passage of the Act.

Finally, the respondent urged that if the Government's interpretation of the Leasing Act is correct, that Act deprives the respondent of its property without due process of law. The argument is that the respondent has a vested right, subject to defeasance upon failure to perform annual assess-

ment work, but subject to such defeasance only by relocation; and that if the Act renders the claim defeasible at the instance of the Government, it impairs a vested right and takes private property for public use without payment of compensation. But the Act does not add to the respondent's burden. The possibility of relocation is taken away, and the possibility of intervention by the Government is substituted in its place. The risk is substantially the same. In either case the locator still has the right to resume work before intervention occurs (*Wilbur* v. *Krushnic*, 280 U.S. 306), and we submit it makes no real difference to him whether it is the Government or a private individual who may take advantage of his default.

CONCLUSION

We respectfully submit that the judgment of the court below should be reversed.

J. CRAWFORD BIGGS,
Solicitor General.
HARRY W. BLAIR,
Assistant Attorney General.
H. BRIAN HOLLAND,
C. E. COLLETT,
Attorneys.

SEPTEMBER 1934.

APPENDIX

The Mineral Leasing Act of February 25, 1920, c. 85, 41 Stat. 437 (U.S.C., Title 30, Secs. 181, 193):

> * * * That deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Act known as the Appalachian Forest Act, approved March 1, 1911 (Thirty-sixth Statutes, page 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act to citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, * * *.
>
> SEC. 37. That the deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits described in the joint resolution entitled "Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming", approved August 1, 1912 (Thirty-seventh Statutes at Large, page 1346), shall be subject to disposition only in the form and manner provided in this Act, *except as to valid claims existent at date of the passage of this Act and thereafter maintained*

in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery. (Italics ours.)

Section 2324, Revised Statutes (Mining Act of May 10, 1872, c. 152, Sec. 5, 17 Stat. 91, 92):

> * * * On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. * * * and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives have not resumed work upon the claim after failure and before such location. * * *
>
> (U.S.C., Title 30, Sec. 28.)

U. S. GOVERNMENT PRINTING OFFICE: 1954